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8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 RICHARD M. CHUDACOFF, M.D.,
12 Plaintiff,

13 Case No.: 2:08-cv-0863-RCJ-GWF

14 vs.

15 UNIVERSITY MEDICAL CENTER OF
16 SOUTHERN NEVADA, et al,

17 Defendants.

18 RICHARD M. CHUDACOFF, M.D.,
19 Plaintiff,
20 vs.

21 Case No.: 2:09-cv-01679-RCJ-PAL

22 UNIVERSITY MEDICAL CENTER OF
23 SOUTHERN NEVADA, et al,

24 **MOTION FOR RECUSAL**

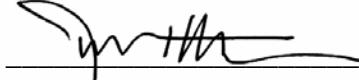
25 Defendants.

26 COMES NOW, Plaintiff RICHARD M. CHUDACOFF, M.D., by and through his
27 counsel, Jacob Hafter, Esq., of **HAFTERLAW**, and hereby submits his Motion for Recusal of
28 Judge Jones from this case and all related cases (“Motion”). This Motion is made pursuant to
Federal Rules of Civil Procedure, Local Rules 7-2, the attached memorandum of points and
authorities, the exhibits hereto, the records and pleadings on file with the Court, of which

1 judicial notice is respectfully requested pursuant to Fed. R. Evid. 201, and any oral argument
2 entertained by the Court at the hearing set on this Motion.

3 Dated this 21st day of June, 2013.

4 **HAFTERLAW**

5 By: 
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MEMORANDUM AND POINTS OF AUTHORITY

I.

INTRODUCTION

A federal judge cannot be so dense and so malignant towards a litigant as Judge Jones has been to Dr. Chudacoff without having some bias. Judge Jones has continuously acted in such a biased manner, through both delay and repeated erroneous decisions, that the only explanation for such behavior is a partiality against Dr. Chudacoff.

For the reasons stated herein, the Plaintiff asks this Court to recuse himself.

II.

LEGAL STANDARD FOR MOTION FOR RECUSAL

Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in any proceeding in which him impartiality “might reasonably be questioned.” A federal judge also shall disqualify himself in circumstances where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b)(1).

Under both 28 U.S.C. § 144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate if “a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.” Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not whether there is bias in fact. Preston v. United States, 923 F.2d 731, 734 (9th Cir.1992); United States v. Conforte, 624 F.2d 869, 881 (9th Cir.1980). In Liteky v. United States, 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994), the United States Supreme Court further explained the narrow basis for recusal:

[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.... [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep

1 seated favoritism or antagonism that would make fair judgment
 2 impossible. Thus, judicial remarks during the course of a trial that
 3 are critical or disapproving of, or even hostile to, counsel, the
 parties, or their cases, ordinarily do not support a bias or partiality
 challenge.

4 *Id.* at 555.

6 **III.**

7 **LEGAL ANALYSIS**

8 **A. THE COURT HAS MADE AND CONTINUES TO MAKE ERRONEOUS
 9 DECISIONS TOWARDS DR. CHUDACOFF.**

10 This Court committed clear error when it dismissed Chudacoff v. UMC, et al, 2:09-cv-
 11 1679 (“Chudacoff II”). In a decision that was so basic as to not even require a formal decision,
 12 but simply a memorandum, the Ninth Circuit clearly reversed this Court’s decision. See
 13 Chudacoff v. UMC, et al, 2:09-cv-1679, Document 119. Listening to the oral argument is even
 14 more instructive, as the Panel clearly is confused about how this Court managed the Chudacoff
 15 cases. See http://www.ca9.uscourts.gov/media/view.php?pk_id=0000010259 (visited June 21,
 16 2013) (the Panel makes comments like “it amazes me” and “it’s even worse than that” and “I
 17 don’t know where the jurisdiction ever came from for Judge Jones” all talking about how this
 18 Court has managed the instant case.).

19 However, what this Court did today in Chudacoff v. UMC, et al, 2:08-cv-0863
 20 (“Chudacoff I”) is beyond egregious. See Chudacoff v. UMC, et al, 2:09-cv-1679, Document
 21 669. The Court, in a clear attempt to castrate Dr. Chudacoff’s federal claims, extended
 22 absolute immunity to the defendants for §1983 claims based on the Ninth Circuit’s ruling in
Buckwalter v. State of Nevada Bd. of Med. Exam’rs, 678 F.3d 737 (9th Cir. 2012), extending
 23 absolute immunity to the Board of Medical Examiners for a summary suspension.
 24

25 In doing so, this Court talks out of both sides of its mouth. The Court recognizes that
 26 the instant case has nothing to do with a summary suspension by saying that “[p]reviously, at a
 27 deposition, Dr. Ellerton testified that the MEC’s actions were not undertaken pursuant to their
 28 summary suspension power, but amounted to a routine administrative action, testimony that

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1 was repeated in one of our previous Orders, and also quoted by the Ninth Circuit.” See
 2 Chudacoff v. UMC, et al, 2:09-cv-1679, Document 669 at 13:8-11. And, yet, in order to apply
 3 absolute immunity to the Defendants under Buckwalter, the Court states” the facts of this case
 4 are more similar to the facts of Buckwalter than the facts of Mishler.” Id. at 13:18-19. This is
 5 a pure disregard for the facts of this case. It is undisputed that the actions taken against Dr.
 6 Chudacoff were intended to be routine administrative actions; the fact that this Court cannot
 7 distinguish the acts from a summary suspension merely shows the abuse of power exercised by
 8 the Defendants, not the need to grant them absolute immunity!

9 However, the Court’s errors do not stop there. The Court then dismisses all §1983
 10 claims under a theory of absolute immunity, despite the language of the Ninth Circuit in
 11 Buckwalter! The Court in Buckwalter holds that such absolute immunity is only a bar on
 12 claims for money damages, as equitable relief, declaratory relief and injunctive relief are still
 13 viable claims even in cases of absolute immunity. Buckwalter, supra, 678 F.3d at 747 (*citing*
 14 Pulliam v. Allen, 466 U.S. 522, 541–42, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984)). In this
 15 Court’s zeal to harm Dr. Chudacoff, it completely disregarded the fact that several forms of
 16 relief may be obtained under §1983 claims.

17 Regardless, the Court has issued its decision, and it will now be in the hands of the
 18 Ninth Circuit to, once again, set this Court straight. The fact that Dr. Chudacoff’s career has
 19 been destroyed and whose life is in shambles and only deteriorating by the day, should not
 20 mean anything to this Court – the same Court, who, at one time, actually recognized that his
 21 constitutional rights were, indeed, violated. What’s another two (2) years to a judge who has
 22 lifelong tenure?

23 Clearly, every substantive motion that Judge Jones has decided related to Dr.
 24 Chudacoff has contained grave errors of law and fact. There is no reasonable basis, at this
 25 point, for believing that this Court can act in a non-biased manner with respect to Dr.
 26 Chudacoff. For this reason, Judge Jones should recuse himself from the Chudacoff cases.

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1 **B. THE COURT HAS DELAYED IN PROVIDING DR. CHUDACOFF WITH
2 DECISIONS AND ONLY DID SO UNDER THREAT OF MANDAMUS**

3 Until today, there were 17 fully briefed motions which remained pending for anywhere
4 between 239 and 456 days. Dr. Chudacoff has filed, pursuant to Local Rule 7-6(b), eight (8)
5 letters asking for an update on the pending motions. See Documents 514, 633, 656, 658, 661,
6 663, 666 and 668. Judge Jones failed to respond to a single request. And yet, two days after
7 Dr. Chudacoff filed the draft petition for writ of mandamus Judge Jones filed the order
erroneously dismissing Dr. Chudacoff's §1983 claims.

8 Dr. Chudacoff is not surprised. In fact, in the draft Writ, Dr. Chudacoff stated the
9 following:

10 Petitioner is well aware of the implications of this Petition. Judge
11 Jones has already issued an erroneous ruling which was adverse to
12 Petitioner in a related case, see Chudacoff v. UMC, et al, 2:09-cv-
13 1679, which was recently overturned by this Court in April, 2013.
14 See Case No. 11-16232. Nonetheless, such erroneous decision still
15 added two years of a delay to that case. Petitioner is highly fearful
16 that the District Court may repeat such erroneous actions. For that
17 reason, Petitioner believes that a recusal of Judge Jones from the
18 instant case is warranted. However, Petitioner is also aware that,
19 to date, he has insufficient evidence to bring a motion to recuse
under the current law of the Circuit. Petitioner, however, would
appreciate if this Court may provide some safeguard to ensure that
the District Court does not take a punitive action against him for
bringing this instant Petition.

20 Document 668-1 at fn 1. For this reason, there is a clear presumption that the Order was, to
21 some extent, retaliatory.¹

22
23 ¹ Putting aside the erroneous decision with respect to
24 absolute immunity, the complete arbitrary nature of this
25 Court's actions towards Dr. Chudacoff and this office is even
seen in the attorneys' fee award that was made. Despite this
26 Court previously awarding this office anywhere between \$350 and
\$450 an hour for attorneys' fees in the Chudacoff cases as well
27 as other physician rights cases, the Court arbitrarily picked
\$300 an hour, out of the air, the lowest fee this Court has
28 ever awarded to this office, to use as an appropriate fee.

1 At this point, the impartiality, objectivity and unbiased nature of the Court is clearly in
 2 question. There was no reason to hold 17 motions (including 2 unopposed motions) for so
 3 long. Worse, the Order which was filed today, did not even resolve all of these motions! The
 4 following Motions are still outstanding:

MOTION	Doc #	Filed Date	Brief Date	Days Briefed
First MOTION in Limine to preclude evidence related to quality of care by Plaintiff Richard Chudacoff, MD. (Hafter, Jacob)	378	3/5/2012	3/22/2012	456
Second MOTION in Limine Regarding Use of State Court Materials by Plaintiff Richard Chudacoff, MD. (Hafter, Jacob)	380	3/5/2012	3/22/2012	456
MOTION for Leave to File Reply re: 378 First MOTION in Limine; filed by Plaintiff Richard Chudacoff, MD. (Hafter, Jacob)	429	4/2/2012	4/19/2012	438
OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider Order re 573 Order on Motion to Strike, by Plaintiff Richard Chudacoff, MD. (Hafter, Jacob)	578	9/28/2012	10/22/2012	244
OBJECTIONS re LR IB 3-1 or MOTION for District Judge to Reconsider Order re 580 Order on Motion to Strike by Plaintiff Richard Chudacoff, MD. (Hafter, Jacob)	581	9/28/2012	10/25/2012	239

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 18 Moreover, the impartiality of this Court is even further questioned by the fact that the
 19 Court did not dismiss the case. If, in fact, the §1983 claims are all dismissed based on absolute
 20 immunity, then there are no more federal claims remaining in the case. While the Court can
 21 retain the remaining claims under supplemental jurisdiction, it is most uncommon for this
 22 Court to do so. In fact, this court never retains jurisdiction on supplemental claims. The only
 23 reason why it can be understood that the Court would do so, is to continue to be able to
 24 influence this case, to the detriment of Dr. Chudacoff.

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IV.

CONCLUSION

While this Court may not be biased towards Dr. Chudacoff, the erroneous nature of all of the substantive rulings which Judge Jones has made towards Dr. Chudacoff and the continual delays which this Court has caused Dr. Chudacoff create the strong impression that this Court is biased against him.

Accordingly, the Plaintiff requests that Judge Jones recuse himself immediately from all Chudacoff related cases.

Dated this 21st day of June, 2013.

HAFTERLAW

By:

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2013, I, personally, did electronically transmit the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing on the following CM/ECF registrants:

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